

Introduced by Senator Escutia

February 22, 2005

An act to add Section 1043.1 to the Evidence Code, and to amend Sections 832.5 and 832.7 of the Penal Code, relating to discovery of peace officer personnel records.

LEGISLATIVE COUNSEL'S DIGEST

SB 779, as introduced, Escutia. Peace officers: complaints: discovery.

Existing law requires law enforcement agencies to establish procedures for investigating public complaints against officers and to maintain files regarding those complaints, as specified. Existing law also establishes discovery procedures for obtaining those files for criminal and civil cases.

This bill would require law enforcement agencies to maintain personnel files containing information regarding complaints against officers, including information about an officer required to be produced in criminal cases by the United States Constitution or the California Constitution. It would establish discovery procedures for obtaining information from those files that is constitutionally required to be disclosed in criminal cases. The bill would require the district attorney or Attorney General to obtain disclosure of the files for the defendant in a criminal case, as specified.

By imposing additional duties on local law enforcement and local prosecuting entities, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1043.1 is added to the Evidence Code,
2 to read:
3 1043.1. (a) Notwithstanding any other law, disclosure of
4 peace officer or custodial officer personnel records retained as
5 provided in subdivision (c) of Section 832.5 of the Penal Code
6 shall occur as provided in this section.
7 (b) In any criminal case, a district attorney's office, the
8 Attorney General's office, a city prosecutor's office, or a grand
9 jury, may obtain disclosure of records retained as provided in
10 subdivision (c) of Section 832.5 of the Penal Code, by making a
11 request in writing to the law enforcement agency that maintains
12 custody of the records. The law enforcement agency shall make
13 disclosure to the prosecutorial agency or grand jury within 10
14 days of the date the request is made. A request pursuant to this
15 subdivision is sufficient if it specifies the name of the officers
16 involved and specifies that the request is made pursuant to this
17 section or subdivision (c) of Section 832.5 of the Penal Code. A
18 prosecutor seeking disclosure shall, at the time that the request is
19 made, serve the defendant with written notice. The request for
20 disclosure may be made at any stage of the proceeding, provided
21 however, that the initial request shall be made not less than 30
22 days prior to trial. A prosecutor may make multiple requests in
23 any case. The prosecutor shall disclose to the defendant all
24 information required to be produced by the Constitution of the
25 United States.
26 (c) In any criminal case in which the prosecutorial agency
27 prosecuting the case has declined or failed to request disclosure
28 of records retained as provided in subdivision (c) of Section
29 832.5 of the Penal Code, the defendant may make a request in
30 writing to the law enforcement agency maintaining custody of
31 the records to deliver the records to the court for review by the

judge hearing the criminal case. The law enforcement agency shall deliver the records to the judge within 10 days of the date the request is made. A request pursuant to this subdivision is sufficient if it specifies the name of the officer involved, specifies that the request is made pursuant to this section or subdivision (c) of Section 832.5, and specifies that no such request has been made by the prosecution. The judge hearing the criminal case shall review the provided records and shall release to the defendant all information required to be disclosed by the Constitution of the United States.

(d) In a criminal case in which the prosecution has made a request pursuant to subdivision (a), the defendant may request that the judge hearing the criminal case review the records provided by the law enforcement agency when the defendant makes a showing upon affidavit or declaration establishing reasonable cause to believe that constitutionally mandated information exists in a personnel file maintained pursuant to subdivision (c) of Section 832.5 of the Penal Code, and that either the prosecution or the law enforcement agency has failed to disclose the information. A hearing on this request shall be held within 10 days of the making of the request and the trial court shall examine the law enforcement records and shall disclose all information required to be disclosed by the Constitution of the United States.

(e) Information disclosed pursuant to this section may be used in any criminal case in which it is relevant.

(f) Information disclosed by a law enforcement agency either to a court or to a prosecutorial agency shall be retained by the court or agency to allow review by an appellate court.

SEC. 2. Section 832.5 of the Penal Code is amended to read:

832.5. (a) (1) Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public.

(2) Each department or agency that employs custodial officers, as defined in Section 831.5, may establish a procedure to investigate complaints by members of the public against those custodial officers employed by these departments or agencies, provided however, that any procedure so established shall

1 comply with the provisions of this section and with the
2 provisions of Section 832.7.

3 (b) Complaints and any reports or findings relating to these
4 complaints shall be retained for a period of at least five years. All
5 complaints retained pursuant to this subdivision may be
6 maintained either in the peace or custodial officer's general
7 personnel file or in a separate file designated by the department
8 or agency as provided by department or agency policy, in
9 accordance with all applicable requirements of law. However,
10 prior to any official determination regarding promotion, transfer,
11 or disciplinary action by an officer's employing department or
12 agency, the complaints described by subdivision (c) shall be
13 removed from the officer's general personnel file and placed in
14 separate file designated by the department or agency, in
15 accordance with all applicable requirements of law.

16 (c) *All complaints and any reports or findings related to those*
17 *complaints shall also be retained in a file separate from the*
18 *officer's general personnel file that shall also contain*
19 *information about the officer required to be produced in criminal*
20 *cases by the Constitution of the United States or the Constitution*
21 *of the State of California. Information contained in the file shall*
22 *be retained for at least five years beyond the officer's separation*
23 *from the employing department and in any event no less than 15*
24 *years from the date that the complaint is made.*

25 (d) Complaints by members of the public that are determined
26 by the peace or custodial officer's employing agency to be
27 frivolous, as defined in Section 128.5 of the Code of Civil
28 Procedure, or unfounded or exonerated, or any portion of a
29 complaint that is determined to be frivolous, unfounded, or
30 exonerated, shall not be maintained in that officer's general
31 personnel file. However, these complaints shall be retained in
32 other, separate files that shall be deemed personnel records for
33 purposes of the California Public Records Act (Chapter 3.5
34 (commencing with Section 6250) of Division 7 of Title 1 of the
35 Government Code) and Section 1043 of the Evidence Code. *In*
36 *addition, complaints and any reports relating to the complaints*
37 *defined in this subdivision shall be retained in the separate file*
38 *specified in subdivision (c).*

39 (1) Management of the peace or custodial officer's employing
40 agency shall have access to the files described in this subdivision.

(2) Management of the peace or custodial officer's employing agency shall not use the complaints contained in these separate files for punitive or promotional purposes except as permitted by subdivision (f) of Section 3304 of the Government Code.

(3) Management of the peace or custodial officer's employing agency may identify any officer who is subject to the complaints maintained in these files which require counseling or additional training. However, if a complaint is removed from the officer's personnel file, any reference in the personnel file to the complaint or to a separate file shall be deleted.

~~(d)~~

(e) As used in this section, the following definitions apply:

(1) "General personnel file" means the file maintained by the agency containing the primary records specific to each peace or custodial officer's employment, including evaluations, assignments, status changes, and imposed discipline.

(2) "Unfounded" means that the investigation clearly established that the allegation is not true.

(3) "Exonerated" means that the investigation clearly established that the actions of the peace or custodial officer that formed the basis for the complaint are not violations of law or department policy.

SEC. 3. Section 832.7 of the Penal Code is amended to read:

832.7. (a) Peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code, *and provided that peace officer or custodial officer personnel records that contain information required to be produced by the Constitution of the United States and retained as specified in subdivision (c) of Section 832.5 shall be disclosed in conformity with the provisions of Section 1043.1 of the Evidence Code.* This section shall not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office.

1 (b) Notwithstanding subdivision (a), a department or agency
2 shall release to the complaining party a copy of his or her own
3 statements at the time the complaint is filed.

4 (c) Notwithstanding subdivision (a), a department or agency
5 that employs peace or custodial officers may disseminate data
6 regarding the number, type, or disposition of complaints
7 (sustained, not sustained, exonerated, or unfounded) made
8 against its officers if that information is in a form which does not
9 identify the individuals involved.

10 (d) Notwithstanding subdivision (a), a department or agency
11 that employs peace or custodial officers may release factual
12 information concerning a disciplinary investigation if the officer
13 who is the subject of the disciplinary investigation, or the
14 officer's agent or representative, publicly makes a statement he
15 or she knows to be false concerning the investigation or the
16 imposition of disciplinary action. Information may not be
17 disclosed by the peace or custodial officer's employer unless the
18 false statement was published by an established medium of
19 communication, such as television, radio, or a newspaper.
20 Disclosure of factual information by the employing agency
21 pursuant to this subdivision is limited to facts contained in the
22 officer's personnel file concerning the disciplinary investigation
23 or imposition of disciplinary action that specifically refute the
24 false statements made public by the peace or custodial officer or
25 his or her agent or representative.

26 (e) (1) The department or agency shall provide written
27 notification to the complaining party of the disposition of the
28 complaint within 30 days of the disposition.

29 (2) The notification described in this subdivision shall not be
30 conclusive or binding or admissible as evidence in any separate
31 or subsequent action or proceeding brought before an arbitrator,
32 court, or judge of this state or the United States.

33 (f) Nothing in this section shall affect the discovery or
34 disclosure of information contained in a peace or custodial
35 officer's personnel file pursuant to Section 1043 of the Evidence
36 Code.

37 SEC. 4. If the Commission on State Mandates determines that
38 this act contains costs mandated by the state, reimbursement to
39 local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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